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# Arrr... Whose Booty, Mates? Who Possesses Legal Title to a Home Run Baseball that Lands Outside a Stadium's Confines?

Michael R. Gavin

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## COMMENTS

# ARRR... WHOSE BOOTY, MATES? WHO POSSESSES LEGAL TITLE TO A HOME RUN BASEBALL THAT LANDS OUTSIDE A STADIUM'S CONFINES?

MICHAEL R. GAVIN\*

### I. INTRODUCTION

In every baseball season, the prospects of acquiring a game-used baseball is on the bucket list of the avid baseball fan. Acquiring such a ball is unlikely, especially when you consider that there could be 40,000 spectators in the stands and around forty baseballs exit the field of play in a given game.<sup>1</sup> From personal experience, the closest I have ever been to obtaining a game-used baseball was when a foul ball was hit above the backstop and into the second deck at PNC Park in Pittsburgh, Pennsylvania. Little did I realize that the same foul ball was not secured in the second deck, but it bounced into the lower bowl area behind home plate and rolled up against the cup holder near my right foot. Before I reached for the baseball, the spectator seated in front of me quickly turned around and snatched the ball. In that moment, I learned that baseballs that left the playing field were a “free for all.”

Although it is baseball tradition that whoever possesses a baseball that enters the stands is the baseball's new owner, what happens if the baseball completely exits the ballpark? Additionally, what would happen to the property rights in the baseball that exited the stadium if other personal property was involved? Further, would those ownership rights change if a crime or civil wrong was committed in acquiring this particular baseball? This Comment will address those questions. First, this Comment will illustrate the factual background of the Major League Baseball (MLB) game that inspired this

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\* Michael R. Gavin is a third-year law student at Marquette University Law School and an Executive Editor of the *Marquette Sports Law Review*.

1. FoulBallzAdmin, *Calculating Foul Ball Odds: More Considerations*, FOULBALLZ (Sept. 18, 2013), <http://foulballz.com/uncategorized/calculating-foul-ball-odds-more-considerations/>.

Comment, followed by baseball's history and tradition regarding baseballs that leave the field of play. Also, this Comment will address property law claims, focusing on abandonment and possession theories. Further, this Comment will address potential conversion and trespass claims to see if either of those remedies can help a person gain ownership of the baseball that exited the stadium. Finally, this Comment will conclude on the likely result of this MLB game's unique situation and how this situation could arise again.

## II. BACKGROUND: THE MAMMOTH HOME RUN AT ISSUE AND AFFECTED STADIUMS

On May 19, 2015, in Pittsburgh, Pennsylvania, the Pittsburgh Pirates fell to the Minnesota Twins by a score of eight to five.<sup>2</sup> During the bottom of the fourth inning, then-Pirates' first baseman Pedro Álvarez hit a 461-foot, solo home run off of the then-Twins' starting pitcher, Ricky Nolasco.<sup>3</sup> The home run ball exited PNC Park, the Pirates' stadium, on the fly and landed directly into a boat belonging to Mr. Ryan Stacheleck (Stacheleck) along the Allegheny River.<sup>4</sup> Stacheleck and his wife were having dinner at a nearby restaurant when the home run ball landed in their boat, which was unoccupied at the time.<sup>5</sup> Just after the home run ball landed in Stacheleck's boat, a person (perpetrator) walking along the river walk stepped into Stacheleck's boat, picked up the baseball, and fled the scene.<sup>6</sup> Stacheleck's wife initially was the only one who wanted the home run ball returned to them.<sup>7</sup> However, Stacheleck has since expressed that he wants the home run ball back as well.<sup>8</sup>

PNC Park, along with AT&T Park (San Francisco Giants) and Great American Ball Park (Cincinnati Reds), are three ballparks that were constructed along large bodies of water.<sup>9</sup> At AT&T Park, the San Francisco Bay sits

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2. *Minnesota Twins vs. Pittsburgh Pirates—Box Score—May 19, 2015*, ESPN, <http://scores.espn.go.com/mlb/boxscore?gameId=350519123> (last visited May 15, 2017).

3. *Id.*

4. John Shumway, *Pedro Alvarez Hits Boat with Long Home Run, Boat Owner Wants Ball Back*, CBS PITT. (May 20, 2015), <http://pittsburgh.cbslocal.com/2015/05/20/pedro-alvarez-hits-boat-with-long-home-run/>.

5. *Id.*

6. *Id.*

7. *Id.*

8. Kevin Draper, *Pittsburgh Man Wants Home Run Ball that Landed in His Boat*, DEADSPIN (May 20, 2015), <http://deadspin.com/pittsburgh-man-wants-home-run-ball-that-landed-in-his-b-1705932916>.

9. Kevin Draper, *Pedro Alvarez Wallops Home Run out of PNC Park, into Moored Boat*, DEADSPIN (May 19, 2015), <http://deadspin.com/pedro-alvarez-wallops-home-run-out-of-pnc-park-into-mo-1705701917>.

370 feet away from home plate, whereas the Allegheny River is 443 feet from PNC Park's home plate.<sup>10</sup> The distance between home plate and the Ohio River at Great American Ball Park is about 580 feet.<sup>11</sup> In PNC Park's fifteen-year

history, only three home run balls have reached the Allegheny on the fly: Daryle Ward (Houston Astros) in 2002, Garret Jones (Pirates) in 2013, and Álvarez (Pirates) in 2015.<sup>12</sup> In addition to those three home run balls that landed in the Allegheny on the fly, thirty-six other home run balls reached the river, but they were not direct hits.<sup>13</sup> Two years have passed, and the home run ball has not been forgotten by the media. In an August 2016 road trip that included a stop in Pittsburgh for a three-game series,<sup>14</sup> Miami Marlins television reporter

Jessica Blaylock reported an in-game story on the Álvarez home run ball from the prior year.<sup>15</sup>

Even though PNC Park, AT&T Park, and Great American Ball Park are situated along a body of water, the same analysis throughout this Comment applies to any MLB stadium where a ball can exit a stadium's confines, such as Oriole Park at Camden Yards (Baltimore Orioles), where eighty-five baseballs have landed on Eutaw Street outside the stadium.<sup>16</sup> Also, Fenway Park (Boston Red Sox) and Wrigley Field (Chicago Cubs) are susceptible to having home run balls exit their stadiums as well. At Fenway, a home run ball can reach

Lansdowne Street after the ball clears Fenway's "Green Monster," whereas at Wrigley, a home run ball can either reach Waveland or Sheffield Avenue.<sup>17</sup>

### III. HISTORY AND BACKGROUND OF BASEBALL PROPERTY RIGHTS, AND ITS

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10. *Id.*

11. *The Ballparks: Great American Ball Park*, THIS GREAT GAME, <http://www.thisgreatgame.com/ballparks-great-american-ball-park.html> (last visited May 15, 2017).

12. Adam Berry, *Alvarez's HR Lands in Boat on Allegheny River*, MLB (May 19, 2015), <http://m.mlb.com/news/article/125386576/pittsburgh-pirates-pedro-alvarezs-hr-lands-in-boat-on-allegheny-river>.

13. Rob Biertempfel (@BiertempfelTrib), TWITTER (May 1, 2016, 2:49 PM), <https://twitter.com/BiertempfelTrib/status/726846119628660736>.

14. *Marlins Schedule*, MIAMI MARLINS, [http://miami.marlins.mlb.com/schedule/?c\\_id=mia#y=2016&m=8&calendar=DEFAULT](http://miami.marlins.mlb.com/schedule/?c_id=mia#y=2016&m=8&calendar=DEFAULT) (last visited May 15, 2017).

15. *Broadcaster Joins Fans on Boat*, MLB, (Aug. 21, 2016), <http://m.mlb.com/video/v1077690083/miapit-broadcaster-joins-fans-on-a-boat-by-pnc-park>.

16. *OriolePark.com: Eutaw Street Home Runs*, BALT. ORIOLES, <http://baltimore.orioles.mlb.com/bal/oriolepark/eutaw.jsp> (last visited May 15, 2017).

17. Brian Costa, *Why Wrigley's Ballhawks Are an Endangered Species*, WALL STREET J. (Oct. 21, 2015), <http://www.wsj.com/articles/renovations-foil-wrigley-fields-ballhawks-1445448414>.

## APPLICATION TO A BASEBALL THAT COMPLETELY EXITS A STADIUM

The home baseball club (Club or home team) is the first possessor of a baseball.<sup>18</sup> The Club supplies the official game-used baseballs for each contest and turns the baseballs over to the umpires before the game.<sup>19</sup> Even if MLB supplies the official game balls for a possible milestone event, for example, San Francisco Giants' left fielder Barry Bonds' successful run towards the MLB record for most home runs in a single season, the Club is still the owner of the baseball as long as the ball is on the playing field.<sup>20</sup> Over the past half-century, home teams have allowed fans to keep any baseballs that entered the stands.<sup>21</sup> This would transfer ownership of the baseball from the Club to the fan, and even includes foul balls or final recorded outs tossed to the fans by the players.<sup>22</sup> Recently, only the New York Mets have attempted to claim that they were the owner of a home run ball that entered the stands, in which the attempt involved New York Mets' catcher Mike Piazza's 300th career home run.<sup>23</sup> Although this is a general overview, ownership of a baseball can be further analyzed by understanding the law of abandonment and possession.<sup>24</sup> But first, baseball's history and tradition regarding baseballs should be explored.

*A. MLB's History and Tradition Pertaining to Baseballs: Non-legal Practice*

Many baseball teams adopted the assumption that fans are allowed to keep any baseball that leaves the field of play.<sup>25</sup> The Detroit Tigers adopted this "common law of baseball" and made this known to the fans by posting, or codifying, signs throughout the stadium permitting them to keep any baseball that leaves the field of play.<sup>26</sup> Also, the Tigers posted their policy on their website under "FOUL BALLS AND HOME RUN BALLS:"

Guests are welcome to keep foul balls and home run balls  
hit into occupied seating areas as souvenirs, but are asked to

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18. Paul Finkelman, *Fugitive Baseballs and Abandoned Property: Who Owns the Home Run Ball?*, 23 CARDOZO L. REV. 1609, 1616 (2002).

19. *Id.*

20. *Id.*

21. *Id.* at 1617.

22. *Id.*

23. *Id.* at 1618.

24. *Id.* at 1611.

25. *See id.* at 1621–22.

26. *Id.* at 1621–22.

be cautious and courteous to other fans when collecting a ball. . . . The Detroit Tigers cannot be held responsible for the conduct of other fans when attempting to obtain a foul or home run ball.<sup>27</sup>

In addition to this policy and other similar ones, there are other ways where teams encourage fans to acquire baseballs.<sup>28</sup> The San Francisco Giants used to post information on their website that conveyed information to fans on the likely destinations of a Barry Bonds home run.<sup>29</sup> Another example is when a

Baltimore Orioles public address announcer used to say over the public address system, “give that fan a contract,” when a fan caught a baseball that entered the stands.<sup>30</sup> What makes baseball unique compared to other professional sports leagues is the fact that baseball fans can keep a baseball that enters the stands, whereas in football and basketball, their respective game balls must be returned to the home team or an official.<sup>31</sup> There are two reasons for this practice. First, a baseball is cheaper in cost compared to a football or basketball, so there is not as much of a financial incentive to go and retrieve a baseball.

Second, the baseball likely sustained a defect when it entered the stands. A defective baseball is not used because it can create an advantage for a pitcher and a disadvantage for a hitter. For example, a scuffed baseball could cause an off-speed pitch, such as a curveball or a changeup, to have “more break.”<sup>32</sup>

Returning to Stacheleck’s situation, by applying baseball’s history and tradition regarding home run baseballs, the Álvarez home run ball presumptively has no value because the ball was likely scuffed or otherwise defected, and the home run ball is subject to baseball’s traditional practice of encouraging fans to keep any baseballs that leave the field of play. What is unique about Stacheleck’s situation is that neither Stacheleck nor the perpetrator attended the baseball game. Baseball’s history and tradition would be difficult to apply here because there are only three stadiums in MLB that sit along a body of water, and it is very possible for people walking along a river walk, or even those enjoying leisure or watercraft activities in a body of water,

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27. *Comerica Park Information – Ballpark A-to-Z Guide*, DET. TIGERS, <http://detroit.tigers.mlb.com/det/ballpark/information/index.jsp?content=guide#F> (last visited May 15, 2017).

28. Finkelman, *supra* note 18, at 1622.

29. *Id.*

30. *Id.*

31. *Id.* at 1622–23.

32. Steven Ellis, *Throwing Pitches*, STEVE ELLIS PITCHING TIPS (Aug. 27, 2015), [http://www.thecompletepitcher.com/throwing\\_pitches.htm](http://www.thecompletepitcher.com/throwing_pitches.htm).

to acquire a baseball that left the field of play when they did not attend the game! If a team has a clause similar to the Detroit Tigers, stating that the team is not responsible for another fan's conduct in regards to obtaining a home run or foul ball, a person in Stacheleck's situation would be explicitly preempted from holding the team liable for any action involving the baseball by contract.

*B. Legal Theories Under Property Law: Abandonment and Possession*

*i. Abandonment Theory*

Abandonment can occur every day. This theory can take on many forms that the average person is familiar with, such as dropping off a television set at a Goodwill store or leaving an old little league baseball bat behind at the local ball field for children to play with. In this subsection, this Comment will explore the categories of abandonment, abandonment law itself, and abandonment law applications to both MLB and Stacheleck's situation.

*a. Categories of Abandonment*

Abandonment by an owner occurs when he or she gives up, deserts, or absolutely relinquishes property.<sup>33</sup> There are two abandonment categories: (1) specific intent of desertion and (2) "failure of the owner to retrieve or reclaim property 'after a casual and unintentional loss.'"<sup>34</sup> For specific intent of desertion, the owner or possessor merely throws away the property or may leave the property behind.<sup>35</sup> Throwing an object away or leaving it behind for someone else to take would satisfy specific intent of desertion.<sup>36</sup> In baseball, the Club through its players, coaches, stadium personnel, and even the visiting team and its staff, desert the game-used baseballs. During the course of a baseball game, there are opportunities to acquire foul balls, home run balls, and other baseballs that are tossed into the stands by players, coaches, bat boys, and ball girls or boys. Tossing a foul ball into the stands is a baseball example of specific intent of desertion.<sup>37</sup> Additionally, a ball received from a player after recording the third out of an inning qualifies under specific intent of desertion as well because there is intent for the ball to leave the playing field and not be reused.

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33. Finkelman, *supra* note 18, at 1618.

34. *Id.* at 1619–20 (quoting RAY ANDREWS BROWN, *THE LAW OF PERSONAL PROPERTY* 8 (3d ed. 1975)).

35. BROWN, *supra* note 34, at 8.

36. Finkelman, *supra* note 18, at 1619.

37. *Id.*

Under the second category, abandonment comes without thought of losing the property or unintentionally losing the property.<sup>38</sup> A home run ball falls under this category.<sup>39</sup> However, a home run ball's (or any baseball's) abandonment may fall under constructive abandonment, which allows the fan to keep the baseball because the ball has no more value to the game due to damage from either being hit by a bat, landing on seats or concrete, or possibly becoming waterlogged.<sup>40</sup>

*b. Abandonment Law*

Generally, the abandoned property's owner must voluntarily and intentionally relinquish the property.<sup>41</sup> In the Commonwealth of Pennsylvania, abandonment has two elements: (1) intent to abandon the property and (2) an external act to carry out the owner's intention.<sup>42</sup> For intent to abandon the property, the property's owner must: (a) "intend to terminate his or her ownership"; (b) relinquish all property rights at the abandonment's occurrence; (c) "without intending to vest ownership in another"; and (d) intend to not reclaim "further possession or resum[e] ownership, possession, or enjoyment [of the property]."<sup>43</sup> The court determines if these elements are met by examining all the facts and circumstances of the case.<sup>44</sup> The abandonment must be voluntary and "[a] judge also may infer from undisputed historical facts that a party intended to abandon property."<sup>45</sup> "Drawing inferences on intent to abandon property does not require applying a legal standard to historical facts, but demands applying logic and human experience, the inference drawn as to intent is factual and not a holding of law."<sup>46</sup> The previous owner could argue against intent by claiming that he or she actually intended to retain ownership of the property.<sup>47</sup>

As for the external act requirement, it is a jury question and the jury

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38. *Id.* at 1619–20.

39. *Id.* at 1620.

40. *Id.* at 1620–21.

41. 7 SUMM. PA. JUR. 2D *Property* § 12:10, Westlaw (database updated Oct. 2016) [hereinafter *Property*].

42. *Buffalo Twp. v. Jones*, 813 A.2d 659, 664 (Pa. 2002).

43. *Property*, supra note 41, at § 12:9.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*



considers multiple factors such as filing a certificate of abandonment with appropriate authorities, and entering into salvage agreements and quick-claiming its interest.<sup>48</sup> External acts consist of overt acts, failures to act, or statements.<sup>49</sup> Common examples include: throwing the property into a trash receptacle outside of an apartment structure; leaving property, such as dishes and money, in trash bags for collection; and failing to recover the property with the intent to relinquish all claims to the property.<sup>50</sup> Further, failure to use the property is not considered abandonment.<sup>51</sup> Finally, for either abandonment category, whoever first discovers and possesses the abandoned property becomes the property's new rightful owner.<sup>52</sup> This new ownership is good against the previous owner who abandoned the property and any other person's land on which the abandoned property was left.<sup>53</sup>

An issue that MLB and its clubs face is spectators who are "experts" of catching baseballs that enter the stands. These fans, known as "ballhawks," have been defined as "someone who attends MLB games with the goal of snagging as many baseballs as possible."<sup>54</sup> These ballhawks normally have good intentions, though, because the proceeds derived from selling a baseball go to charity.<sup>55</sup> The most recent situation was for New York Yankees' Alex Rodriguez's 3,000th career hit, which ended up being a home run off of Detroit Tigers' starting pitcher Justin Verlander at Yankee Stadium.<sup>56</sup> The home run ball was caught by Zach Hample, a notorious ballhawk who has collected over 8,000 MLB official baseballs in Section 103 of Yankee Stadium, and he was at first reluctant to hand over the baseball to Rodriguez.<sup>57</sup> However, Hample eventually agreed to exchange the Rodriguez home run ball for a \$150,000 donation by the Yankees to his charity, "Pitch In For Baseball."<sup>58</sup>

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48. *Buffalo Twp. v. Jones*, 813 A.2d 659, 665 (Pa. 2002).

49. *Property*, supra note 41, at § 12:10.

50. *Id.*

51. *Id.*

52. *Id.* § 12:15.

53. *Id.*

54. Megan Zahneis, *Ballhawks Give Back by Collecting Baseballs*, MLB (June 20, 2012), <http://m.mlb.com/news/article/33629770/>.

55. *See id.*

56. Bryan Hoch, *A-Rod: 3rd to Homer for 3,000th Hit*, MLB (June 20, 2015), <http://m.mlb.com/news/article/131700474/a-rod-third-to-homer-for-3000th-hit/>.

57. Justin Tasch, *Famous Ballhawk Snags A-Rod's 3,000th Hit, Won't Return It*, N.Y. DAILY NEWS (June 20, 2015), <http://www.nydailynews.com/sports/baseball/yankees/famous-ballhawk-snags-a-rod-3-000th-hit-won-return-article-1.2264699>.

58. Dan Martin, *Yankees Pay \$150K to Ballhawk's Charity for A-Rod's 3,000th*, N.Y. POST (July 3, 2015), <http://nypost.com/2015/07/03/yankees-pay-150k-to-ballhawks-charity-for-a-rods-3000th/>.

Unfortunately, some spectators who catch baseballs are unwilling to negotiate and decide to keep the ball for likely personal gain (i.e., sell the baseball). A typical process for negotiations with a fan begins with the home team's media relations staff, who notifies the ballpark's operations crew.<sup>59</sup> The operations crew then tracks down the fan who caught the ball and begins negotiating with the fan in an isolated area.<sup>60</sup> The vast majority of fans are very obliging and will generally receive an autographed item by the player who desires the baseball and possibly tickets to an upcoming home game.<sup>61</sup> Usually, a fan's unreasonable price demand rarely comes to fruition.<sup>62</sup>

Ballhawks lose leverage with selling a baseball on the open market when the baseball is not MLB-authenticated.<sup>63</sup> The Major League Baseball Authentication Program is designed to authenticate memorabilia, which distinguishes the memorabilia from other memorabilia items in the market.<sup>64</sup> Additionally, "the program offers an objective third-party authentication system that guarantees genuine memorabilia for all MLB fans."<sup>65</sup> A baseball will only be authenticated if the baseball is returned to the designated authenticator, who attests that the ball is genuine.<sup>66</sup> A baseball lacking authentication provides little value to a fan.<sup>67</sup> The only situation where a fan can regain his or her leverage in negotiations with the operations crew is when, on a rare occasion, baseballs are hologrammed ahead of time, and the fan knows the baseball he or she acquired is the correct piece of memorabilia.<sup>68</sup>

### *c. Application of Abandonment Law to MLB*

Home run baseballs are subject to abandonment law. First, there is intent to abandon the baseball. Using Pennsylvania's four elements, there is an intent to terminate ownership when the home team does not seek to recover any

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59. Zack Meisel, *Lets Make a Deal: Players, Fans Negotiate for Keepsakes*, MLB (June 27, 2012), [http://mlb.mlb.com/news/print.jsp?ymd=20120627&content\\_id=34014004&vkey=news\\_mlb&c\\_id=mlb](http://mlb.mlb.com/news/print.jsp?ymd=20120627&content_id=34014004&vkey=news_mlb&c_id=mlb).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Authentication*, MLB, <http://mlb.mlb.com/mlb/authentication/> (last visited May 15, 2017).

65. *Id.*

66. *MLB Authentication Program Information*, MLB, <http://mlb.mlb.com/mlb/authentication/program.jsp> (last visited May 15, 2017).

67. Meisel, *supra* note 59.

68. *See id.*

game-used baseballs that leave the field of play. The home team can relinquish its right to a baseball that leaves the field of play by posting its relevant baseball policy or encouraging spectators to keep the baseball.<sup>69</sup> The home team does not vest ownership of the baseball to another person, meaning it does not assign its property right in the baseball to other parties beforehand by showing that it is a “free for all” for spectators to keep a baseball that enters the stands. Finally, as for intent, a home team usually does not intend to reclaim, further possess or resume ownership, or enjoy the baseball by not retrieving the baseball or asking for the baseball back. The only circumstances where a team attempts to reacquire a baseball that left the field of play are when either a statistical record is broken (e.g. record breaking home run ball)<sup>70</sup> or when a player accomplishes a milestone (e.g. first career home run).<sup>71</sup>

As for the external act requirement, it is satisfied when the home team fails to retrieve the ball that enters the stands. A game-used baseball does have some value to the home team, in which the baseball could be used for batting practice, but the home team opts to let the fans keep the game balls. Also, a home team’s policy in regards to baseballs entering the stands, or simply encouraging the fans to keep the baseball, possibly serves as a certificate of abandonment, in which the home team no longer wishes to possess the baseball that entered the stands.

Therefore, by considering the intent to abandon the baseball that entered the stands by the home team, along with the external actions that showed intent to abandon the baseball, abandonment has occurred and the fan that first discovers and possesses the baseball is the new owner of the baseball. The fan’s new title is good against the home team and any land owner, in which the baseball fell onto the owner’s property.

*d. Abandonment Law Application to Stacheleck’s Situation*

Revisiting Stacheleck’s situation, it appears that the perpetrator who walked along the river walk and stepped into Stacheleck’s boat to retrieve the baseball is the new rightful owner of the baseball. As shown earlier in MLB’s application to abandonment law, the home team, the Pirates, did not seek to recover the Álvarez home run ball. By doing this, the Pirates relinquished any rights to the ball and additionally did not vest any ownership rights in the baseball to another party. Also, the team did not attempt to reclaim, repossess

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69. Finkelman, *supra* note 18, at 1616–17.

70. See Meisel, *supra* note 59.

71. David Biderman, *Fans Play Hardball After Snagging Even Obscure Milestone Home Runs*, WALL STREET J. (July 8, 2009), <http://www.wsj.com/articles/SB124700099868207685>.

or resume ownership, or have enjoyment in the home run ball. For the external act requirement, the Pirates abandoned the Álvarez home run ball by not retrieving the baseball and presumptively adopted the policy of encouraging the fans to keep any baseballs that leave the field of play.

By being the first person to find and possess the home run ball, the perpetrator is the new rightful owner of the Álvarez home run ball, and his ownership is good against the Pirates. Additionally, his ownership is good against any claim by Stacheleck, even though the Álvarez home run ball landed in Stacheleck's boat.

## ii. Possession Theory

An additional way to determine who has title to a baseball is through possession.<sup>72</sup> A recent case that is similar to Stacheleck's situation is *Popov v. Hayashi*, which centered around the possession of a home run ball as well.<sup>73</sup>

### a. *Popov v. Hayashi: Historic Background and Case Overview*

Mr. Alex Popov and Mr. Patrick Hayashi both attended the October 7, 2001 baseball game between the Los Angeles Dodgers and the San Francisco Giants, where Giants' leftfielder Barry Bonds further cemented himself into baseball history by adding on to his historic home run hitting season.<sup>74</sup> Bonds stepped up to the plate for his first at bat in the bottom of the first inning.<sup>75</sup> Bonds was facing a one ball, one strike count before Dodgers' starting pitcher Dennis Springer surrendered the historic home run.<sup>76</sup> Springer pitched to Bonds a hanging knuckleball that caught the inner-half of the plate, and Bonds took full advantage of the mistake pitch and deposited the baseball over the right field wall for a home run.<sup>77</sup>

The home run ball landed in the webbing of Mr. Popov's glove, but it is unclear if Mr. Popov secured the ball.<sup>78</sup> Also, Mr. Popov possibly lost his

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72. See generally *Popov v. Hayashi*, No. 400545, 2002 WL 31833731 (Cal. App. Dep't Super. Ct. Dec. 18, 2002).

73. See generally *id.*

74. *Id.* at \*1.

75. *Id.*

76. *Barry Bonds Home Run Tracker*, MLB, [http://mlb.mlb.com/mlb/events/mlb\\_bonds\\_hr\\_info.jsp](http://mlb.mlb.com/mlb/events/mlb_bonds_hr_info.jsp) (last visited May 15, 2017).

77. *Barry Bonds Hits His 73rd Homer of the Season*, YOUTUBE (July 24, 2014), <https://www.youtube.com/watch?v=zosM9cKCqos>.

78. *Popov*, 2002 WL 31833731, at \*1.

balance when reaching for the ball.<sup>79</sup> As Mr. Popov was trying to complete the catch, a crowd of people quickly pounced on him, and knocked him to the ground in order to wrestle away the home run ball from him.<sup>80</sup> Mr. Hayashi was among the people that were on the ground during the scrum, but he spotted the ball laying unattended, picked it up, and put it in his pocket.<sup>81</sup>

In *Popov*, the court stated that in order to show possession, “the actor must retain control of the ball after incidental contact with people and things.”<sup>82</sup> Mr. Popov’s ball security could not be determined before and after being mobbed by the crowd of fans, and ultimately did not walk away with the home run ball. The court ruled that Mr. Popov did not show that he retained control of the baseball after the other fans attacked him; therefore, he did not have possession of the baseball.<sup>83</sup>

The *Popov* court did not end at the possession issue, but it also looked at whether Mr. Popov had a right to possession and other equitable remedies.<sup>84</sup> The court adopted the following rule in order to try to find an equitable remedy for Mr. Popov:

Where an actor undertakes significant but incomplete steps to achieve possession of a piece of abandoned personal property and the effort is interrupted by the unlawful acts of others, the actor has a legally cognizable pre-possessionary interest in the property. That pre-possessionary interest constitutes a qualified right to possession which can support a cause of action for conversion.<sup>85</sup>

The court analogized possession to a journey down a path.<sup>86</sup> At first unimpeded, Mr. Popov had two possible outcomes for the incoming home run: (1) possess the home run ball by catching it or (2) drop the baseball and fail to achieve possession.<sup>87</sup> The court said the issue that Mr. Popov encountered on his journey was that he was greeted by a “gang of bandits” that broke up his catch before he came to the point where he could either possess the home run

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79. *Id.*

80. *Id.* at \*2.

81. *Id.*

82. *Id.* at \*6.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

ball or fail to possess the home run ball.<sup>88</sup> If there is a legally protected pre-possessionary interest, that interest provides Mr. Popov a “qualified right to possession and enables him to raise a claim to the baseball under a conversion theory.”<sup>89</sup> Also, recognizing this interest addresses harm caused to Mr. Popov by the mob of fans, but Mr. Hayashi’s interests were not considered.<sup>90</sup> Because the court wanted to be equitable, it considered Mr. Hayashi’s interests as well.<sup>91</sup>

The court reemphasized that “Mr. Hayashi was not a wrongdoer.”<sup>92</sup> Mr. Hayashi, like Mr. Popov, was thrown to the ground as well, but Mr. Hayashi was able to free himself from the situation, and he discovered the loose home run ball and pocketed it.<sup>93</sup> By pocketing the baseball, Mr. Hayashi “attained unequivocal dominion and control.”<sup>94</sup> The court determined that Mr. Popov did have a qualified pre-possessionary interest in the home run ball, but because he was unable to secure the baseball after getting mobbed, that interest did not establish “a full right to possession that is protected from a subsequent legitimate claim.”<sup>95</sup>

The court then examined the fairness of awarding one party the ball over the other, but realized that a decision for either party would be unfair.<sup>96</sup> If the court ruled in Mr. Popov’s favor, the ruling would have been based on the assumption that Mr. Popov would have caught the home run ball. However, if the court favored Mr. Hayashi, the court’s ruling would have to be based on the fact that Mr. Popov did not catch the baseball.<sup>97</sup> The court wrestled with this issue of fairness and felt it was best to rule that both Mr. Popov and Mr. Hayashi “have a superior claim to the ball as against all the world.”<sup>98</sup> However, the court experienced a further problem over the fact that both Mr. Popov and Mr. Hayashi have an equal claim of dignity over each other, but the court found a middle ground.<sup>99</sup>

The court looked at the theory of equitable division because both Mr. Popov and Mr. Hayashi’s claims were strong and equitable division appeared fair

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88. *Id.*

89. *Id.* at \*7.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

for both parties.<sup>100</sup> The court cited *Keron v. Cashman*, where the *Keron* court “noted that possession requires both physical control and the intent to reduce the property to one's possession.”<sup>101</sup> Additionally, “control and intent must be concurrent.”<sup>102</sup> In *Popov*, there was no question of control or intent, but the court experienced difficulty concerning the quality of Mr. Popov and Mr. Hayashi's claims.<sup>103</sup> Both Mr. Popov and Mr. Hayashi intended to catch the home run baseball.<sup>104</sup> Mr. Popov showed intent to catch the home run ball when he used his glove and when the ball made contact with his glove's webbing.<sup>105</sup> Mr. Hayashi intended to acquire the home run ball because he spotted the loose baseball, picked the ball up, and pocketed the ball.<sup>106</sup> The problem with the *Popov* situation was that neither Mr. Popov nor Mr. Hayashi had a stronger claim over the other.<sup>107</sup> Ultimately, the court determined that both Mr. Popov and Mr. Hayashi had an equal, undivided interest in the home run ball.<sup>108</sup> The baseball was ordered to be sold, and the proceeds from the sale were \_\_\_\_\_ to \_\_\_\_\_ be divided equally between Mr. Popov and Mr. Hayashi.<sup>109</sup>

*b. Possession Claim Application to Stacheleck's Situation*

*Popov* would serve as very persuasive case law if Stacheleck's situation ever goes to court. To achieve possession of the ball, Stacheleck would need to show that he retained control of the baseball. The problem that Stacheleck faces for outright possession is that he was nowhere near the baseball. His docked boat was left unoccupied while he was having dinner with his wife at a nearby restaurant. Since Stacheleck was not in his boat when the Álvarez ball landed there, he could not have retained control because his absence precluded his attempt to control the home run ball.

In addition to an unsuccessful possession claim, Stacheleck does not have a pre-possessionary right to the baseball either. Stacheleck did not have to take complete steps to achieve possession of the ball. Those steps could have been

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100. *Id.* at \*7–8.

101. *Id.* at \*8.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at \*1.

106. *Id.* at \*2.

107. *Id.* at \*8.

108. *Id.*

109. *Id.*

incomplete as long as he took significant steps to achieve possession of the home run ball and his effort to achieve possession was interrupted by an unlawful act. This would have provided Stacheleck with a pre-possessionary interest in the baseball.

Stacheleck failed to take any steps towards achieving possession of the baseball. First, Stacheleck's absence alone shows he took no significant steps to achieve possession of the home run ball. If Stacheleck was present in his boat and tried to acquire the Álvarez home run, his claim would be much stronger. Second, Stacheleck's boat was easy to access. According to video footage of the incident, the perpetrator had little trouble stepping into the boat, as he only held onto part of the boat to keep the vessel steady so that he could enter.<sup>110</sup> Stacheleck took no preventative measures against potential trespassers, such as installing any barriers to prevent unwanted occupants. Additionally, the perpetrator easily exited Stacheleck's boat as well, where he only needed his female partner to hold the boat steady while he stepped out.<sup>111</sup>

Because Stacheleck failed to take any significant steps to achieve possession of the Álvarez home run ball, he has no pre-possessionary right in the baseball either. As a result, no fairness balancing needs to take place between Stacheleck's interests and the perpetrator's interests, as well as no finding of equitable division. Overall, by considering possession itself and pre-possessionary interests, Stacheleck would not have a successful possession claim against the perpetrator on the Álvarez home run ball.

### iii. Overall Property Conclusion to Stachleck's Situation

After considering the legal theories of abandonment and possession, Stacheleck would have no successful property claim on the Álvarez home run ball. The Pittsburgh Pirates effectively abandoned the home run ball by showing no intent to go and recover the baseball for their use or for another assigned party's use. Further, the Pirates encouraged fans to keep any baseballs that left the field of play. This intent is combined with external actions, for example, failing to ask for or retrieve any baseballs, to further show abandonment. Also, Stacheleck has no possession claim or pre-possessionary interest in the home run ball because he did not control the baseball at any time or take significant steps to achieve possession of the baseball.

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110. Draper, *supra* note 9.

111. *Id.*



IV. BECAUSE STACHELECK DOES NOT HAVE A PROPERTY CLAIM, HE HAS  
NO RECOURSE UNDER A CONVERSION CLAIM

A. *Conversion in General*

Conversion is defined as “the wrongful exercise of dominion over personal property of another.”<sup>112</sup> Conversion is a tort that applies to a “more serious interference with the lawful possessor’s interest in exclusive possession of personal property.”<sup>113</sup> With conversion, there must be an exercise of dominion or control when removing the property.<sup>114</sup> Wrongfully withholding property can be considered actual interference even if the defendant acquired the property legally.<sup>115</sup> “If a person entitled to possession of personal property demands its return, the unjustified refusal to give the property back is conversion.”<sup>116</sup>

The person who commits an act that results in conversion must have done the act with intent.<sup>117</sup> The defendant does not have to know that the property belongs to someone else or have intent to dispossess the true owner of using and enjoying the property.<sup>118</sup> One example of conversion is theft.<sup>119</sup> Also, intentional destruction of personal property or use of the property in an unauthorized way constitutes conversion.<sup>120</sup> “All conversions are trespasses, but not all trespasses are conversions.”<sup>121</sup> As for recovery, the plaintiff may be awarded “specific recovery of the property or monetary damages.”<sup>122</sup>

B. *Revisiting Popov: Conversion Claim*

The *Popov* court stated that there is no conversion unless the baseball rightfully belonged to Mr. Popov, and someone who neither has legal title or possession, or a legal right to possession, can bring a conversion claim as

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112. *Fresno Air Serv. v. Wood*, 43 Cal. Rptr. 276, 278 (Cal. Dist. Ct. App. 1965).

113. ARTHUR BEST & DAVID W. BARNES, *BASIC TORT LAW: CASES, STATUTES, AND PROBLEMS* 746 (3d ed. 2010).

114. *Jordan v. Talbot*, 361 P.2d 20, 28 (Cal. 1961).

115. *Popov v. Hayashi*, No. 400545, 2002 WL 31833731, at \*3 (Cal. App. Dep’t Super. Ct. Dec. 18, 2002).

116. *Id.*

117. *Id.*

118. *Id.*

119. 18 AM. JUR. 2D *Conversion* § 20, Westlaw (database updated Nov. 2016).

120. RICHARD A. MANN & BARRY S. ROBERTS, *BUSINESS LAW AND THE REGULATION OF BUSINESS* 137 (10th ed. 2011).

121. *Id.*

122. *Popov*, 2002 WL 31833731, at \*3.

well.<sup>123</sup> The legal issue, then, was to determine “whether Mr. Popov achieved possession or the right to possession as he attempted to catch and hold on to the ball.”<sup>124</sup> As shown earlier, Mr. Popov had a pre-possessory right to the home run baseball, which allowed him to raise a conversion claim.<sup>125</sup> However, the problem of both Mr. Popov and Mr. Hayashi not having a superior claim over the other was problematic.<sup>126</sup> The court came to the conclusion that both Mr. Popov and Mr. Hayashi had an equal and undivided interest in the baseball, and Mr. Popov’s conversion claim “[was] sustained only as to his equal undivided interest.”<sup>127</sup>

### C. *Conversion Claim in Pennsylvania*

A Pennsylvania conversion claim mirrors California, the jurisdiction of the *Popov* court, but Pennsylvania’s law is clearer. Pennsylvania requires that for conversion, “the defendant, without the plaintiff’s consent or lawful justification, intentionally exercised dominion or control over the plaintiff’s chattel which so seriously denied or interfered with the plaintiff’s lawful right to possess or control it.”<sup>128</sup> Pennsylvania courts have illustrated common conversion scenarios:

- (a) [a]cquiring possession of the goods, with an intent to assert a right to them which is in fact adverse to that of the owner[;]
- (b) [t]ransferring the goods in a manner which deprives the owner of control[;]
- (c) [u]nreasonably withholding possession from one who has the right to it[;]
- [or]
- (d) [s]eriously damaging or misusing the chattel in defiance of the owner’s rights.<sup>129</sup>

### D. *Conversion Claim Application to Stacheleck’s Situation*

Using *Popov* as precedent, Stacheleck would not be able to bring a conversion claim against the perpetrator. Stacheleck never had legal title to the Álvarez home run baseball because the perpetrator claimed title to the

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123. *Id.*

124. *Id.*

125. *Id.* at \*7.

126. *Id.* at \*8.

127. *Id.*

128. 4 STANDARD PA. PRAC. 2D *Conversion, Generally* § 23:113, Westlaw (database updated Dec. 2016).

129. *Norriton E. Realty Corp. v. Central-Penn Nat’l Bank*, 254 A.2d 637, 638 (Pa. 1969) (quoting WILLIAM L. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 66 (2d ed. 1955)).

baseball by being the first to find and possess the baseball after the Pirates abandoned the baseball from Álvarez's home run. Also, Stacheleck never had possession of the baseball, let alone near the home run ball. Stacheleck was at a restaurant, not in his boat, so he could never have come in contact with the baseball and retain control of the ball. Additionally, Stacheleck did not have a pre-possessionary interest in the home run baseball because he failed to take significant steps towards possessing the baseball. Stacheleck was not in his boat, did not take any preventative measures in keeping others out of his boat, and his boat was easy to access and occupy. Because Stacheleck lacked possession or a pre-possessionary interest in the baseball, he could not bring a conversion claim to court.

V. STRUCK OUT ON PROPERTY AND CONVERSION CLAIMS, BUT  
STACHELECK HAS ANOTHER OPPORTUNITY TO OBTAIN RECOURSE:  
TRESPASSING CLAIM

Stacheleck has no property claim against the perpetrator; however, he has other options. Stacheleck can bring a trespass claim against the perpetrator in order to recover damages because the perpetrator occupied the boat when he lifted the home run ball out of Stacheleck's boat. There are two kinds of trespassing: "trespass to land and trespass to chattel."<sup>130</sup> "Trespass to land is the intentional and unauthorized invasion of real property," whereas trespass to chattel is when a person intentionally interferes with someone's right of possession to personal property.<sup>131</sup> "Real property" is "[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land."<sup>132</sup> "Personal property" is considered as "[a]ny movable or intangible thing that is subject to ownership and not classified as real property."<sup>133</sup> In Stacheleck's situation, his boat is the property that the perpetrator trespassed. A boat is considered personal property because it is a movable vehicle and is not land. Therefore, Stacheleck could bring a trespass to chattel claim against the perpetrator.

Additionally, the perpetrator could be charged with criminal trespass as well. Criminal trespass typically occurs when a defendant unlawfully enters the property of another or unlawfully remains on the property.<sup>134</sup> The State, or

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130. *Tort Basics: Trespass, Nuisance, and Conversion*, General Business Law Article, INC. (Nov. 1, 1999), <http://www.inc.com/articles/1999/11/15380.html>.

131. *Id.*

132. *Property*, BLACK'S LAW DICTIONARY (10th ed. 2014) [hereinafter *Property*, BLACK'S LAW].

133. *Personal Property*, BLACK'S LAW DICTIONARY (10th ed. 2014).

134. F. LEE BAILEY & KENNETH J. FISHMAN, HANDLING MISDEMEANOR CASES *Criminal Trespass* § 18:27 (database updated June 2016).

the Commonwealth in Pennsylvania, has the burden of proof to prove beyond a reasonable doubt that a defendant trespassed onto another's property.<sup>135</sup> In Stacheleck's situation, the perpetrator unlawfully entered Stacheleck's property by stepping into Stacheleck's boat without permission to retrieve the home run baseball. Applying specifically to Stacheleck's situation, trespass to chattel and criminal trespass will be examined below.

### *A. Trespass to Chattel*

#### *i. Trespass to Chattel in General*

To commit trespass to chattel, a person, with intent, must either (1) dispossess another of the property or (2) use or intermeddle the property that is possessed by another person.<sup>136</sup> "'Intermeddling' means intentionally bringing about a physical contact with the chattel."<sup>137</sup> Chattel consists of physical, tangible property.<sup>138</sup> Additionally, chattel is classified as personal property.<sup>139</sup> The law of trespass to chattel's purpose is to protect owners or possessors from unauthorized use or intermeddling of their property by other people.<sup>140</sup>

In defense to trespass of chattel claims, a defendant can raise that he or she had consent to enter the property. Even if the defendant has consent, the owner or possessor of the property can revoke consent, and any use of the property beyond the revocation or excess of consent, plus meeting all the elements, constitutes trespass to chattel.<sup>141</sup> Consent is not the only defense of a trespass to chattel claim, whereby both public and private necessity defenses can be raised as well.<sup>142</sup>

Public necessity entails that "[o]ne is privileged to enter land in the possession of another if it is, or if the actor reasonably believes it to be, necessary for the purpose of averting an imminent public disaster."<sup>143</sup> A public necessity action involves destroying or appropriating another's property,

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135. 75 AM. JUR. 2D *Trespass* § 190, Westlaw (database updated Nov. 2016).

136. RESTATEMENT (SECOND) OF TORTS § 217 (AM. LAW INST. 1965).

137. *Id.* § 217 cmt. e.

138. Michael D. Scott, SCOTT ON COMPUT. INFO. TECH. L. *Trespass to Chattels* § 15.14, Westlaw (database updated 2017).

139. BEST & BARNES, *supra* note 113, at 745.

140. Scott, *supra* note 138.

141. *Id.*

142. BEST & BARNES, *supra* note 113, at 752.

143. RESTATEMENT (SECOND) OF TORTS, *supra* note 136, at § 196.

and the action is performed by a public authority or a private individual.<sup>144</sup> Private necessity concerns a private person's actions that destroy, use, or consume

another's property without permission or over the owner or possessor's objections.<sup>145</sup> Under the Restatement (Second) of Torts, a person is privileged to either enter or remain on the land possessed by another if it is reasonably necessary to prevent serious harm to (1) the actor, the actor's land, or the actor's chattel; or (2) the other or a third person, or either party's land or chattel unless "the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action."<sup>146</sup>

Typical relief for a plaintiff can consist of injunctive relief and damages for actual harm. The plaintiff may seek nominal damages, but such damages will only be awarded for actual dispossession of the property and not for intermeddling that caused *de minimis* harm.<sup>147</sup> Compensatory damages, punitive damages, and injunction are other remedies that may be available as well for trespass to chattel.<sup>148</sup>

## ii. Pennsylvania Trespass to Chattel Law

The Commonwealth of Pennsylvania adopted the section 217 Restatement (Second) rule.<sup>149</sup> Also, Pennsylvania courts stated that the property involved must be tangible or, in other words, the chattel's existence must be ascertainable by concrete proof.<sup>150</sup> Black's Law Dictionary defines "tangible personal property" as "property that can be seen, weighed, measured, felt, touched, or in any other way perceived by the senses."<sup>151</sup> Examples of tangible personal property include "furniture, cooking utensils, and books."<sup>152</sup>

*Pestco, Inc. v. Associated Products, Inc.* illustrates what is intangible property, where the case involved information consisting of the customer's identity and the classification of the shipped goods on Pestco's bill of lading.<sup>153</sup> The *Pestco* court held that the bill of lading information was intangible

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144. John Alan Cohan, *Private and Public Necessity and the Violation of Property Rights*, 83 N.D. L. REV. 651, 653 (2007).

145. *Id.*

146. RESTATEMENT (SECOND) OF TORTS, *supra* note 136, at § 197.

147. Scott, *supra* note 138.

148. BEST & BARNES, *supra* note 113, at 752.

149. *Pestco, Inc. v. Associated Products, Inc.*, 880 A.2d 700, 708 (Pa. Super. Ct. 2005).

150. *Id.*

151. *Property*, BLACK'S LAW, *supra* note 132.

152. *Id.*

153. *Pestco, Inc.*, 880 A.2d at 708.

property, and information on the bill of lading is not subject to a trespass to chattel claim.<sup>154</sup> The court's reasoning is not clear on this issue, but one presumption could be that information on a bill of lading cannot be seen, weighed, measured, felt, touched, or perceived by our senses. The bill of lading is tangible personal property because the document can be touched. It is unlikely that the bill of lading's words can be seen because personal property's definition mentioned books, not words themselves.

### iii. Application of Trespass to Chattel Claim to Stacheleck's Situation

Stacheleck has a stronger case under trespass to chattel than a property claim. Stacheleck should use the second prong of section 217 of the Restatement, where the defendant used or intermeddled with property possessed by another person. Here, the perpetrator made physical contact with Stacheleck's chattel, through his boat, by holding onto the boat for stability and entering into Stacheleck's boat. The perpetrator remained in the boat until he picked up the Álvarez home run ball and eventually exited the boat. Stacheleck's boat is considered tangible personal property because his boat can be seen or touched, thus making its existence ascertainable.

The perpetrator cannot argue that he had consent to enter the property because Stacheleck was not in his boat at the time. The perpetrator entered Stacheleck's boat without permission, negating a consent defense. Also, public and private necessity would not be successful defenses for the perpetrator. A public necessity argument would fail because there is no imminent public disaster involving Stacheleck's boat, and a private necessity argument would fail as well because there was no potential serious harm to the perpetrator, Stacheleck, or Stacheleck's boat. Damages likely be minimal because there does not appear to be actual harm to Stacheleck, where the perpetrator just stepped into his boat, unless the perpetrator damaged something. The perpetrator's actions would probably fall under *de minimis* harm, and Stacheleck would unlikely claim any significant damage award.

## B. *Criminal Trespass*

### i. Criminal Trespass in General

Criminal trespass in the Commonwealth of Pennsylvania is codified under title 18, section 3503.<sup>155</sup> Under section 3503(a)(1):

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154. *Id.* at 708.

155. 18 PA. CONS. STAT. § 3503 (2016).

A person commits an offense if, knowing that he is not licensed or privileged to do so, he: (i) enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof; or (ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.<sup>156</sup>

“Occupied structure” means “[a]ny structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”<sup>157</sup> Black’s Law Dictionary defines “vehicle” as “[a]ny conveyance used in transporting passengers or things by land, water, or air.”<sup>158</sup> The penalty for criminal trespass in Pennsylvania under section 3503(a)(1)(i) is a third degree felony charge that potentially brings both a seven-year prison term and a \$15,000 fine.<sup>159</sup> A section 3503(a)(1)(ii) charge qualifies as a second degree felony and can potentially sentence the defendant to ten years in prison and a \$25,000 fine.<sup>160</sup>

The Pennsylvania statute is derived from the Model Penal Code.<sup>161</sup> Under the Model Penal Code, a person commits criminal trespassing if he or she knows that he or she was not licensed or privileged to enter onto the property, “enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof.”<sup>162</sup> Pennsylvania law differs from the Model Penal Code for sentencing because criminal trespass under the Model Penal Code is considered a misdemeanor if the act is committed in a dwelling at night.<sup>163</sup> Otherwise, the act is considered a petty misdemeanor.<sup>164</sup> Affirmative defenses under the Model Penal Code for criminal trespass include: (1) the involved building or occupied structure was abandoned; (2) at the time, the premises were open to the public and “the actor complied with all lawful conditions imposed on access to or remaining in the premises; or” (3) the actor had reasonable belief that the premises’ owner or person that possesses the power to license access to the property would have licensed the actor to enter or remain on the premises.<sup>165</sup>

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156. § 3503(a)(1).

157. § 3501.

158. *Vehicle*, BLACK’S LAW DICTIONARY (10th ed. 2014).

159. 101 PA. CODE § 15.66(b)(5) (2016).

160. § 15.66(b)(4).

161. MODEL PENAL CODE § 221.2 (AM. LAW INST. 2016).

162. § 221.2(1).

163. *Id.*

164. *Id.*

165. § 221.2(3).

In Pennsylvania case law, the key item to focus on for “occupied structures” is whether the structure is adapted for overnight accommodation.<sup>166</sup> This focus should examine “the nature of the structure itself and its intended use, and not whether the structure is in fact inhabited.”<sup>167</sup> In *Commonwealth of Pennsylvania v. Nixon*, the court held that an uninhabited house that lacked water and electricity service was still a form of an occupied structure because the trailer was a house and was intended to be used as a type of residential property that would be used for overnight accommodations.<sup>168</sup>

ii. Criminal Trespass Claim Application to Stacheleck’s Situation

Pennsylvania’s statutory definition of “occupied structure” is not favorable to Stacheleck. In Pennsylvania, an “occupied structure” must be adapted for overnight accommodations or for carrying out business, and Stacheleck’s boat appears to not fit the description. By viewing the video clip, Stacheleck’s boat does not look suitable for overnight accommodations or carrying out business. Stacheleck’s boat is small and does not appear to possess sleeping quarters. Also, the boat is not engaging in business, just leisure activity. Therefore, Stacheleck’s boat fails to meet both prongs of criminal trespass in Pennsylvania.

Other jurisdictions would have provided Stacheleck and the Commonwealth with more favorable results of bringing a criminal trespass charge against the perpetrator. For instance, in Iowa, not only does its statute include that occupied structures must be suitable for overnight accommodations or to carry out business, but the statute is even more broad, which includes “other activit[ies] therein.”<sup>169</sup> Leisurely boating would likely be included in “other activities,” and as a result, Stacheleck’s boat would fit the definition of an “occupied structure” in Iowa and potentially bring him a successful claim. In the state of Montana, its statutory definition of “occupied structure” is more favorable to Stacheleck because the Montana statute means “any building, vehicle, or other place suitable for human occupancy.”<sup>170</sup> Since a boat is considered a vehicle and humans can occupy a boat, Stacheleck’s boat would be considered an occupied structure in Montana. Overall, comparing and contrasting these jurisdictions show how states differ between statutory

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166. *Commonwealth v. Nixon*, 801 A.2d 1241, 1247 (Pa. Super. Ct. 2002).

167. *Id.*

168. *Id.* at 1247–48.

169. IOWA CODE § 702.12 (2016).

170. MONT. CODE ANN. § 45-2-101(47) (2016).



definitions and how those differences can change case outcomes.

## VI. CONCLUSION

In conclusion, after examining various areas of property law, the Pedro Álvarez home run baseball belongs to the perpetrator that stepped into Stacheleck's boat. The perpetrator being the true owner of the baseball is an unpopular decision, considering that the perpetrator trespassed into Stacheleck's boat. This truly makes baseballs that exit the field of play a "free for all." What is unfortunate for Stacheleck is that he has little remedy against the perpetrator. His strongest theory is a trespass to chattel claim, but as shown earlier, his damages are likely to be *de minimis*. His other remedial options, conversion and criminal trespass, against the perpetrator would fail based upon Pennsylvania's definition of "occupied structure," and Stacheleck cannot bring a conversion claim to court because he never had possession or any pre-possessionary interest in the Álvarez home run baseball.

In Pittsburgh, building PNC Park along the North Shore has been good for local businesses.<sup>171</sup> During PNC Park's opening season, local bars, restaurants, and hotels reported strong sales.<sup>172</sup> If other Clubs and their cities have an opportunity to build a stadium situated along a body of water, they may build the stadium for the potential benefit of local businesses and the local economies. If so, surely Stacheleck's situation would not be the last.

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171. See Johnna A. Pro, *From Downtown to North Shore, Spending Is up on Game Days, Nights*, POST-GAZETTE (July 15, 2001), <http://old.post-gazette.com/regionstate/20010715spinoff0715p5.asp>.

172. *Id.*